Anwar et al v. Fairfield Greenwich Limited et al Doc. 199

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ANWAR, *et al.*, Plaintiffs,	MASTER FILE NO. 09-CV-0118 (VM)
v.	MOTION FOR SEALING ORDER
FAIRFIELD GREENWICH LIMITED, *et al.*, Defendants.	[FILED UNDER SEAL]
	[SUBJECT TO MOTION TO FILE UNDER SEAL]
This Document Relates To:	
09-CV-2588 (VM) (*Pierce* Action)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT FGA'S MOTION FOR SEALING ORDER

July 31, 2009

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Plaintiff Fairfield Greenwich Advisors LLC ("FGA"), by and through its attorneys, respectfully submits this memorandum of law in support of its motion for an order permitting FGA to file the July 31, 2009 Amended Declaration of Paul J. Sirkis, and the exhibits thereto ("Amended Sirkis Declaration"), as well as all papers filed in connection with the present Motion, under seal.

BACKGROUND

Plaintiffs in *Pierce* filed their complaint on February 17, 2009 in the Supreme Court for the State of New York, and FGA removed that action to this Court on March 19, 2009. In their motion to remand, filed April 8, 2009, *Pierce* Plaintiffs argue, *inter alia*, that removal was improper because the 100-person requirement under CAFA is not satisfied. According to *Pierce* Plaintiffs, Greenwich Sentry Partners, LP ("GSP"), the partnership on behalf of which they purport to bring their action, "has just 29 current limited partners, and 5 former limited partners." Memorandum in Support of Remand in *Pierce* at 5.

The Declaration of Paul J. Sirkis, dated July 27, 2009, filed with FGA's opposition to the motions to remand by the *Ferber*, *Pierce*, *Morning Mist* and *Sentry* Plaintiffs (the "Opposition"), referenced certain non-public documents (the "Documents") in establishing that the number of beneficial owners of GSP's limited partners exceeds 100 persons. After the Opposition was filed, counsel for FGA and counsel for *Pierce* Plaintiffs met and conferred and it was agreed that FGA would seek leave of the Court to submit the Documents under seal.

The Documents contain highly confidential, personal, and commercially sensitive information belonging to current and former investors in GSP. FGA seeks a sealing order in order to preserve the confidentiality of this information.[1] The Documents consist of (i) excerpts from subscription agreements ("Subscription Agreements") entered into by investors in GSP; (ii) copies of capital account statements of certain limited partners in GSP; (iii) a record of capital transactions in GSP for September 2006; (iv) responses from non-party GSP investors to subpoenas ("Subpoena Responses") served on those non-parties pursuant to an order issued by Magistrate Judge Theodore H. Katz on May 13, 2009; and (v) information provided voluntarily by certain limited partners in GSP ("Voluntary Responses"). The Subpoena Responses have previously been provided to counsel for *Pierce* Plaintiffs pursuant to a confidentiality agreement.

ARGUMENT

The Court has "supervisory power over its own records and files." *Nixon v. Warner Communications,* 435 U.S. 589, 598 (1978). "[T]he decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." *Id.* at 599; *see also Seattle Times Co. v. Rhinehart,* 467 U.S. 20, 36 (1984) (trial courts have "broad discretion. . . to decide when a protective order is appropriate and what degree of protection is required"). Although the public's right to access court records has been recognized and is generally presumed, "[i]t is uncontested . . . that the right . . . is not absolute." *Nixon,* 435 U.S. at 598; *In re WorldCom, Inc. Sec. Litig.,* Nos. 02 Civ. 3288 (DLC), 02 Civ. 4816 (DLC), 2003 WL 22287350, at *2 (S.D.N.Y. Oct. 6,2003) (presumption of public access to court records "not absolute"); *see also United States v. Arnodeo,* 44 F.3d 141, 146 (2d Cir. 1995) ("[T]he fact that a document is a judicial record does not mean that access to it cannot be restricted.").

[1] A courtesy copy of the Amended Sirkis Declaration containing all exhibits, including those subject to this Motion, has been provided to chambers and has been served on counsel for *Pierce* Plaintiffs. A copy of the Amended Sirkis Declaration, excluding exhibits, has been filed electronically with the Court.

When considering whether to allow public access to certain court records, "the task of the courts is to 'weigh[] the interests advanced by the parties in light of the public interest and the duty of the courts.'" *Amodeo,* 44 F.3d at 146 (quoting *Nixon,* 435 U.S. at 602) (alteration in original); *see also Joy v. North,* 692 F.2d 880, 893 (2d Cir. 1982) (a decision to seal is "an exercise of judgment" which must take into account "[t]he importance of the material to the adjudication, the damage disclosure might cause, and the public interest in such materials"). Thus, where parties sufficiently demonstrate that a protective order is appropriate, the Court may take steps to limit the public's access to its records to ensure the confidentiality of the information contained therein. *Amodeo,* 44 F.3d at 146.

Here, the parties agree that the Documents contain sensitive and highly personal information belonging to investors in GSP, such as, *inter alia*, home addresses, social security numbers, tax identification numbers, account numbers, and amounts invested. The publication of such information is unnecessary and likely would cause harm to GSP investors. *See, e.g., Entral Group International, LLC v. YHCL Vision Corp.*, No. CV 05-1912(ERK), 436 F. Supp. 2d 404, 2006 WL 1589844 at * 1 (E.D.N.Y. June 7, 2006) (prohibiting disclosure of Social Security numbers in civil action absent particularized need); *Andrews v. Cruz*, NO. 04 CIV. 0566 (PAC) (RLE), 2006 WL 1984650, at *3 (S.D.N.Y. July 14, 2006) (upholding redaction of personal information of non-parties, including home address and family information).

Additionally, pursuant to a confidentiality agreement, counsel for FGA and counsel for *Pierce* Plaintiffs have expressly agreed to share the Subpoena Responses while maintaining the confidentiality of those Responses. FGA now seeks to uphold that agreement by obtaining an appropriate sealing order. *See Bergen Brunswig Corp. v. IVAXCorp.*, No. 97 Civ. 2003 (PKL), 1998 WL 113976, at *5, *6 (S.D.N.Y. March 12, 1998) (noting that "[a] confidentiality agreement would have no effect if the parties were unable to rely on it" and denying motion to unseal complaint in light of prior confidentiality agreement entered into by the parties).

CONCLUSION

Accordingly, in light of the confidentiality concerns in connection with the information contained in the Documents, FGA requests that the Court permit FGA to file the Amended Sirkis Declaration, and exhibits thereto, as well as all papers filed in connection with the present Motion, under seal.

Dated: New York, New York
July 31, 2009

Respectfully submitted,

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